



Article: Proprietary Estoppel – A revival for a flexible friend?

In the context of disputes as to the beneficial interests in land between friends &/or family proprietary estoppel has often been seen as the poor relation or an after thought. It seems such claims are often included as an alternative to a claim based on a “common intention” constructive trust more as one of those lawyer’s belt & braces responses than because it is a truly alternative, distinct claim that serves a different purpose. Perhaps the point is best made by asking when did you last see a claim based on proprietary estoppel alone or even proprietary estoppel as the primary claim?

In *Stack v Dowden* [2007] 2 WLR 831 Lord Justice Walker doubted that proprietary estoppel can or should be wholly assimilated with “common intention” constructive trusts. It is clearly understood by practitioners that if it is likely to be difficult to establish a contribution/detriment that is a direct contribution to the purchase price given Lord Bridge’s doubts that anything less will do in *Lloyds Bank v Rosset* [1991] 1 AC 107 a proprietary estoppel claim may save the day but are there other situations where proprietary estoppel provides the answer? The more recent case of *Powell & anr v Benney* [2007] EWCA Civ 1283 highlights further the potential distinct significance of proprietary estoppel claims. So what are the differences & what distinct or additional relief does proprietary estoppel provide?

In *Stack v Dowden* Lord Justice Walker drew attention to the very different nature of proprietary estoppel & “common intention” constructive trusts. He pointed to the fact that “common intention” constructive trusts are concerned with the identification of the true beneficial owner or owners. Putting it another way the claimant seeks a declaration that he is an existing beneficial owner as a result of the common intention & his contributions to the property. By way of contrast proprietary estoppel is focused on “asserting an equitable claim against the conscience of the true [beneficial] owner”. It follows the claimant seeks a declaration by the Court that he has an equity & a determination of what is necessary to satisfy that equity which may be a beneficial interest in the property but may equally be a monetary award.

In *Powell & anr v Benney* Sir Peter Gibson highlights the distinction made by Lord Justice Walker (who did not give the lead judgment) in *Jennings v Rice & ors* [2002] EWCA Civ 159 between two types of proprietary estoppel; the bargain category and the non-bargain category. Although he acknowledges the academic criticism of the dichotomy in Lord Justice Walker’s analysis, Sir Peter Gibson adopts, explains & applies it. He identifies the bargain category as arising where there is a consensual arrangement or a bargain something akin to but falling short of a contract involving a clear understanding & definition of the claimant’s expectations & the detriment required to complete the bargain.

In a case that falls into the bargain category the detriment is requested or required by the true owner as being the quid pro quo for the expected benefit. In such cases the minimum equity to meet the case will be the expected benefit. By way of contrast where there is no bargain but rather a promise of a benefit & resulting but purely voluntary detriment the minimum equity that results will be arrived by a different route. Although the expectation that underpins the estoppel is the starting point for determining the minimum equity it is not the whole picture, rather there is a wide judgmental discretion to ascertain the minimum equity operating on the conscience of the true owner.

In a non-bargain proprietary estoppel the Court will start with the expectation but consider whether the expected benefit is out of all proportion to the actual detriment that was suffered. Sir Peter Gibson was clear that in assessing the detriment it was necessary to exclude detriments that were not causally linked to the expectation & to give credit for benefits received including countervailing benefits that arose directly from the detriment. It follows the kind & generous claimant who would have acted to their detriment to assist the true owner out of love, friendship or human compassion will have suffered less detriment than the cold calculating claimant who saw their chance to secure a benefit. Having concluded the expectation was out of all proportion to the detriment suffered the wide judicial discretion will be exercised by reference to the expectation, what is proportionate in light of the actual net detriment suffered & the unconscionableness of allowing the benefactor to step back from his promises/assurances.

It follows proprietary estoppel provides the more flexible solution than the “common intention” constructive trust so far as the nature of the detriment & its relationship to the acquisition of the property is concerned. Further the non-bargain proprietary estoppel provides the infinitely flexible means to satisfy the equity of the position in contrast to fulfilment of the promise/expectation provided for by the bargain proprietary estoppel & “common intention” constructive estoppel. In other words if your detriment is not directly related to the acquisition of the Property or part of its value or it is disproportionately low compared to the promised benefit proprietary estoppel will be your flexible friend.

Did you see...? Recent cases you may have missed

Real Property

Restrictive Covenants; Compensation ; s.84(1A) Law of Property Act 1925;

Winter & another v Traditional & Contemporary Contracts Ltd [2007] EWCA Civ 1088

The Respondent developer had demolished a single dwelling & constructed two houses in its place, which development was in breach of an existing restrictive covenant, the terms of which the Appellants had the right to enforce. When the Respondent realised this the houses had almost been completed & the Respondent applied for modification of the covenant. The Appellants did not object, but sought damages under s.84(1A) of the Law of Property Act 1925, namely a proportion of the profits of the development, based upon what would have been obtained in negotiations for release of the covenant. The Lands Tribunal declined to follow this approach, finding that the loss of the covenant did not result in any loss of amenity or reduction in the Appellants' house.

Held: On appeal the Court of Appeal upheld the decision of the Lands Tribunal, stating that while the negotiated share approach was well recognised in civil proceedings for breach of a restrictive covenant, applications under s.84(1A) had to be based upon the effect of the development on the objectors and not on the loss of opportunity to extract a share of the development value. The basis of the compensation was the loss caused by the diminution in the value of enjoyment of the objector's property.

Landlord and Tenant

Common Parts; Managers; Scope of LVT's powers under s.24(1) Landlord & Tenant Act 1987

Cawsand Fort Management Company Ltd v EM Stafford and others [2007] EWCA Civ 1187

The landlord appealed against the decision of the Lands Tribunal to uphold the decision of the LVT regarding the area of land over which a manager appointed under s.24(1) of the Landlord & Tenant Act 1987 ("the Act") should exercise his powers. The LVT had found that such powers extended not only to the leased buildings & their curtilages, but also to 'amenity land' which the Respondents were entitled to use by virtue of easements & covenants, but which was located outside the leased buildings & their curtilages, which the landlord disputed.

Held: The appeal was dismissed. The language of s.24(1) referred to the appointment of a manager to carry out functions 'in relation to' any premises to which Part II of the Act applied, & while this required a casual nexus between the functions to be carried out & the premises defined in s.21(1), it did not confine the manager's functions to buildings & their curtilages. The amenity land was accurately described as being 'in relation to' the premises comprised of the buildings containing the flats & in the circumstances an order appointing a manager to carry out functions 'in relation to' the premises could extend to the amenity land & other land not within the buildings or curtilages.

ECHR First Protocol, Art 1

Right to peaceful enjoyment of possessions; Compulsory letting & purchase legislation

Urbarska obec Trencianske Biskupice v Slovakia [2007] ECHR 74258/01

An application was made by an association of landowners whose land had been let & subsequently sold pursuant to reforms designed to facilitate the country's transition to a democratic society & market-oriented economy.

Held: Where land was lawfully expropriated, Art 1 neither guaranteed a right to full compensation, nor justified a total lack of compensation in ordinary circumstances. The statutory terms of compensation would be material to whether a fair balance had been achieved between the implementation of social & economic policies in public interest & the protection of the individual's fundamental rights. The relevant legislature had a legitimate aim in respect of the consolidation of ownership & use of agricultural land, & the applicable margin of appreciation was wide. The deprivation of property had been in the public interest, but the level of compensation received by the applicant both for the letting & purchase could not be justified as proportionate, accordingly the applicant's Art 1 rights had been violated.

Case summaries Alice Marshment and Andy Creer

The members of the Hardwicke Property Team have specialised skills and experience in all aspects of the law relating to Real Property, Landlord & Tenant, Housing and other property-related subjects.

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